1954

Byron R. Griffiths v. Shirley Griffiths : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

BYRON R. GRIFFITHS,
Plaintiff and Respondent,

— vs. —

SHIRLEY GRIFFITHS,
Defendant and Appellant.

Case No. 8154

BRIEF OF RESPONDENT

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AUTHORITIES CITED

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STATEMENT OF FACTS

In this case, we have the novel proposition of the cart before the horse. The post-marital conduct of the parties was but a continuation of the situation as it had developed and existed from some five or six years off and on association between the parties before the marriage. The parties had kept company during that period

of time and had become successively more incompatible so that a normal marriage was completely negated and never developed. Then, on the eve of the plaintiff's induction into World War II, the plaintiff, from a kind, humane and generous motive, voluntarily married the defendant to give her the status of a wife solely to give her financial allotment support and soldier's death benefit because he knew he might not return, (R. 15-16) all of which he was not required to do. Thereafter, and consistent with the previous history of the parties, it is obvious that they both recognized that this was a marriage in name only.

From the date of plaintiff's induction the day following the marriage on December 6, 1943, until his departure for overseas from Camp Beal in November, 1944, the plaintiff was stationed in the states (R. 16) and his wife could have accompanied him and lived with him during that year, as normally she would have done. But nowhere in the record does she say she did that, attempted it, or had any desire to live with him. He had a wife in name only. (R. 18) Her letters were ordinary matter of fact letters. (R. 17) She came to see him for about four days before his departure overseas (R. 16), not a particularly impressive gesture even under the circumstances. Then, consistent with the plaintiff's version, he wrote her for a divorce when he reached Hawaii and knew definitely he was returning from his army service alive and the basis and reason for this marriage no longer existed (R. 18). The defendant de-

murred, and during the plaintiff's 90 day mustering out period, the parties tried it again (R. 20).

During this period, the plaintiff proved acts of mental cruelty by defendant sufficient to establish grounds for the divorce the court granted him. Defendant claimed that her conduct was justified because it was occasioned by plaintiff's drinking and the type of friends he associated with, but those were the same friends plaintiff had before the marriage, (R. 58 and 79) and these friends objectionable to defendant did not justify her conduct in being unjustly suspicious, searching plaintiff's pockets and embarrassing him with calls to his friends, precipitating arguments by bringing up the past (R. 21-22-23-24) accusing him of giving her syphilis (R. 5) (when she was just as much on the loose before the marriage when they contracted syphilis, as he was, and he was cured within a year and she still has it, indicating hers might have had an earlier start) etc.

Her conduct was such as to drive him back to the army in June, 1946 (R. 24, 25, 46).

For a year thereafter, defendant failed to join plaintiff and live with him as a wife (R. 25). There is some correspondence in which he stated rents were high where he was stationed, but when defendant made up her mind to join him in Camp Lee, she did (R. 25). There, four years after this mock marriage, and after plaintiff's grounds of cruelty had accrued, defendant finds the

plaintiff in the company of another woman (R. 46)—her first and only credible complaint of cruelty. It is uncontested that the plaintiff shipped this other girl out of town forthwith (R. 48) the defendant condoned this incident (R. 25, 46) and the parties commenced living together as husband and wife. The situation thereafter, as viewed by the court acting within its province, shows that the defendant revived her former conduct (R. 26, 47) and, as the plaintiff testified, the situation was worse than ever, there was constant quarreling and tension at all times and the parties spoke civilly only three or four days out of a month (R. 26), and the parties separated and have lived separate and apart since the fall of 1947. There is nothing in the record to indicate that the plaintiff ever since said time six years ago kept company with this woman (R. 57) or any other woman.

The plaintiff testified that he was evacuated from combat duty in Korea in 1951 and hospitalized six weeks for a disease called lichen planis, a disorder induced by nervousness and worry which causes a breaking out of the skin and terrific itching all over the body (R. 28). He testified that worry over his unwholesome marital relationship was definitely one of the causes of this nervous disorder (R. 29) "worrying me very much, upsetting me very much, and that my physical and mental condition would improve if the relationship were severed." (R. 29). Plaintiff was still suffering from this disorder two and a half years later at the time of trial in June, 1953 (R. 29). He further testified that he would

not and did not want to live with Mrs. Griffiths as her husband, that her conduct since the marriage had caused him great mental distress and suffering and had definitely caused his health to suffer (R. 33).

On this record, the Court granted a divorce to the plaintiff who sought it. Appellant demurs to this, feeling that because of his "brutality" in once having a woman four years after this meaningless marriage was conceived, he should be denied a divorce and deprived of his right to find happiness during his remaining life as a penalty for having voluntarily married this defendant in a humane and merciful gesture where she alone stood to reap the benefit.

STATEMENT OF POINTS OF APPELLANT

I.

THE TRIAL COURT'S DECISION WAS AGAINST THE LAW.

II.

THE EVIDENCE WAS INSUFFICIENT TO SUPPORT A FINDING IN FAVOR OF THE PLAINTIFF.

CONTRA ARGUMENT

I.

THE TRIAL COURT'S DECISION WAS AGAINST THE LAW.

Appellant complains that the trial court's decision was against the law because the basis of the Court's de-

cision, according to appellant's theory, was that the husband proved minor acts of cruelty and had no desire for this marriage to continue, and the Court granted a divorce notwithstanding that the wife had ground and did not desire a divorce. Even accepting appellant's theory, how does the decision run contrary to the law? If the Court finds that there is evidence to support and prove plaintiff's cause of action, the plaintiff is entitled to the relief he seeks, without regard to the wishes of the other party. As for plaintiff proving "minor" acts of cruelty, certainly the language of the Court cannot be stronger than as expressed in its Findings of Fact concerning the acts of cruelty by defendant toward plaintiff. Findings No. 7 and 8 enumerating the specific acts of defendant's cruelty constitute two full pages of the record and contain just about every act that a nagging, jealous, suspicious, shrewish wife could be guilty of. And then appellant has the temerity to question the trial court's judgment by saying such decision is shocking to one's sense of good conscience, justice and decency because this spouse was "so guilty" and because the wife didn't want a divorce.

Of course she didn't want a divorce. Her only complaint against him throughout ten years was an isolated instance of alleged adultery seven years ago, whereas he supported and maintained her during all of this marriage in exchange for living with her approximately four months during the ten years. On the other hand, she has repaid him by making his life a hell on earth when they

were together, driving him back into the army to escape her (R. 24, Finding 7) and breaking his health to the point of his suffering a serious disorder for the last three years of this marriage. Is a decision severing such an unfair and unhealthy relationship "shocking to good conscience, justice and decency"? And we will not unduly burden this Court with authorities that the trial judge is the weigher of the evidence. There is ample evidence in the stark record to support plaintiff's case, and from the Court's Findings and judgment it is apparent that he found the plaintiff credible and decided accordingly that the plaintiff had proved his cause of action and was entitled to a divorce.

Appellant cites *Alldredge v. Alldredge,* 229 P. 2d 681, *Cordner v. Cordner,* 61 P. 2d 601, and *Doe v. Doe,* 158 P. 781, that acts and conduct of a husband to a wife may constitute cruelty, but before a decree is granted to a husband on similar grounds, "it ought to be somewhat of an aggravated case." (*Doe v. Doe*). We cite the record and the Court's Findings to support that this case is something even more than "somewhat of an aggravated case."

Then appellant recites that where both parties are guilty of grounds, this Court has recognized the doctrine of comparative rectitude and grants a divorce to the party least at fault (terming herself the party least at fault), recognizing that the union should be severed. Should relief then be denied under identical circum-

stances, just because the party "least at fault" desires to hang on to the hulk of a wrecked marriage for selfish reasons inconsistent with the best interest of both parties. Should one wronged party be left shackled in bondage because of the selfish desires of the wrongdoer? Appellant apparently thinks so, citing *Hendricks v. Hendricks,* 257 P. 2d 366, as support that whatever the basis of the doctrine of comparative rectitude, the simple equitable rule of "clean hands" should bar Byron Griffith's action for divorce here.

In the *Hendricks* case, both parties claimed a divorce and the court said surely the parties should be set apart and the divorce granted to the one least at fault—the doctrine of comparative rectitude. Certainly, that is logical and you would not expect the court to grant the divorce to the one most at fault where both sought a divorce. Defendant further says that the *Hendricks* case holds that where either spouse is accused of the commission of a felony, adultery, or any other heinous offense, the doctrine of comparative rectitude will not apply. A close reading of this case will disclose that that is not what the court says. It says:

> "There are undoubtedly some circumstances, such as *mutual* conviction of a felony, adultery, or other serious offenses which may justify a court of equity in refusing to grant relief. Whether this be recrimination or the "clean hands" doctrine is of no importance here. *To affirm that a guilty spouse is never entitled to a divorce is a position*

> *difficult to apply to the facts of life.* It is seldom, perhaps never, that any wholly innocent party seeks a divorce against one who is wholly guilty. . . . Although some statutes specify that a divorce may be granted to 'the party not in fault' *our statute wisely contains no such provision.*"

The court then recites its policy of taking into consideration the practical exigencies of such situations. In viewing the practical exigencies of the Hendricks marriage, it granted a divorce to the one least at fault where no good purpose, either social, moral, ethical, or legal, could be served by compelling these two people, clearly ill-suited and maladjusted to each other, to continue the legal relationship of husband and wife. The identical situation exists in the *Griffiths* case. Should the court refuse to grant a divorce to the plaintiff simply because the wife doesn't seek a divorce and thereby merely lessens the burden on the court of weighing the niceties of the cruelty of each to decide who was least at fault? Also, Finding 10 recites that plaintiff's past cruelty and adultery was condoned by the defendant and never revived after the parties resumed cohabitation in Virginia in 1947.

As stated, her only worthy claim of cruelty on the part of respondent toward her during their marriage was his alleged adultery, and the evidence of both parties is in accord that the appellant forgave her husband, condoned his conduct, and they thereafter cohabited and lived together as husband and wife in Virginia for about three months. There is no evidence in the record that the plaintiff ever repeated or revived the condoned

conduct, and appellant is therefore left bereft of the cruelty with which she now so volubly brands the respondent. So how does the Hendricks case support her when there is no adultery left?

An extensive annotation of 74 pages commencing at p. 102 of 32 ALR 2d fully reviews and cites cases restating the well-accepted rule that condonation followed by cohabitation without the offender repeating or reviving the condoned conduct thereafter, will bar the injured party from raising such previously condoned conduct as grounds for divorce. The headnote case, *Brown v. Brown,* Kan., 232 P. 2d 603, was an appeal from a divorce granted to the husband, the wife contesting the sufficiency of the husband's evidence and the failure of the court to recognize her defense of condonation by the husband. The divorce was affirmed, the husband's evidence of cruelty consisting of the wife's expressing disapproval of the appellee's choice of jobs, his family, his hobbies and recreation choices, their houses and furniture, and her constant nagging pertaining to the way he drove a car, his smoking, drinking and so forth. We cite this cruelty, which was deemed adequate to support the granting of a divorce to the husband, because it so closely parallels the cruel acts set forth by respondent as having been committed by his wife in the instant case. In the Brown case, the review court rejected the wife's defense of condonation, since she repeated her cruel conduct after her husband's condonation thereof. The trial judge in the case before this Court found that appellant repeated her cruel conduct when she lived with respondent in

Virginia for some three months after his condonation of her former cruelty and their subsequent cohabitation. (Finding No. 9)

Appellant cites the case of *Clark v. Clark,* New Mex., 225 P. 2d 147, and states in her brief that this case answers the question presented in the case now before the court, "Does recrimination afford a valid defense in a suit for divorce sought on the grounds of incompatibility." However, we think the *Clark* case supports the plaintiff's position and not the defendant's in that it affirms the right of the trial judge to use his discretionary powers in trying and deciding equity cases. The *Clark* case holds nothing more than that the trial judge should have admitted proffered evidence of the husband's adultery and then weighed it in deciding the matter. The wife tendered proof of her husband's adultery in support of her recriminatory defense of incompatibility to her husband's suit based on incompatibility. The trial judge held the adultery offered by the defendant in support of her defense was immaterial and excluded proof of it, since the courts had ruled that incompatability is not a recriminatory defense to incompatibility, and granted a divorce to the husband pursuant to the latest New Mexico case of *Pavletich v. Pavletich,* 174 P. 2d 832, which held that *a divorce should be granted where the parties were irreconcilable,* the trial judge having determined that the husband had adduced sufficient proof of incompatibility on his wife's part to show that the parties were irreconcilable.

Mrs. Clark appealed the rejection of the offered proof on the grounds that although incompatibility is not as such a recriminatory defense to incompatibility, yet it was the adultery that had induced and caused the incompatible acts of the wife and the evidence to that effect should have been admitted. The Supreme Court held that under such a situation, possibly the adultery could have been the cause of the wife's incompatibility and therefore sent the case back for a new trial wherein the trial judge should admit and consider the adultery and then decide whether the husband was still entitled to a divorce notwithstanding the adultery.

This holding is squarely in support of the Court's decision in the Griffiths matter. Here the trial judge admitted and weighed the husband's association with another woman and thereafter granted a divorce to plaintiff after considering this evidence. The *Clark* case says nothing more than that the court should consider this evidence and then render a decision consistent with the exercise of the court's discretion after weighing all the evidence. The trial court in the instant case did exactly what the *Clark* case said the court had a duty to do, and then decided in favor of the plaintiff, which the *Clark* case says the court had a right to do.

Further, we are in accord with the reasoning expressed in the *Pavletich* case, supra, that a divorce

should be granted to one party or the other where the record shows the irreconcilability of the parties.

Appellant further complains that the Court erred in believing that mental cruelty once made out by the husband mandatorily required the granting of a divorce regardless of what had occasioned the cruelty or how guilty the plaintiff himself might have been, so long as defendant had not asked for affirmative relief and the marriage seemed hopeless, apparently basing her opinion on a passing observation of the Court at R. 31 that "the defendant is not contesting the divorce."

Regardless of what the court said, what the court did is what is important. How can the defendant say the action was uncontested when the court let in all of the testimony the defendant had, regardless of whether it was pleaded or not. Although the defendant did not counterclaim for a divorce, she contested it by saying the plaintiff was not entitled to a divorce and she introduced all the evidence she desired to negate plaintiff's evidence. However, the trial court after weighing all of the evidence in the case saw fit to grant the plaintiff a divorce and we think justly and equitably so.

We note in passing that appellant's brief remarks in one place of the "guilt" and "most serious misconduct" of the plaintiff, and in another place, of the plaintiff being guilty of "such shocking conduct." In view that the de-

fendant believes this to be true, and so alleges in her brief, we are at a loss to find any other conclusion for her not wanting to have a divorce in this matter or letting the plaintiff have a divorce, except for her own vindictiveness and selfishness or desire for personal gain from allotment protection, and the Court in Finding 12 so finds her motives to be in resisting this divorce.

POINT II.

INSUFFICIENCY OF THE EVIDENCE.

The appellant claims the evidence is insufficient to justify the decision, since the only cruel acts of defendant happened during a 90 day period in 1946 and were justified because of plaintiff's conduct. Appellant attempts to invade the province of the court and determine this case on the basis of the evidence as she believes it. There is no question in our minds but that the court took into consideration the novel and peculiar nature of this particular marriage and all of the evidence as a whole, in reaching its decision. That is the very purpose of the trial court, to weigh all the evidence, and determine the case in accordance with whom and what evidence the court chooses to believe. The court determined, as set forth in its Findings of Fact, that the defendant had been guilty of sufficient acts of cruelty toward plaintiff to cause him grevious mental suffering and undermine his health and warrant the awarding of a divorce to him. Certainly the court can believe one as against the other, particularly when defendant's testimony is so

anomolous. For instance, after finding plaintiff at Camp Lee with another woman, the defendant condoned plaintiff and started living with him. She attempted to impress the court that the association was never thereafter mentioned and caused no difficulty or concern between them—that they lived as two doves in a cote (P. 64). Her falling off and losing weight was due to "climatic conditions" (P. 64). If that was the true loving situation between them, then why did she demand and receive a statement from plaintiff that he would not use her departure as grounds for desertion, when she left Camp Lee and returned to Salt Lake City.

The appellant cites the case of *Aldredge v. Aldredge,* Utah 229 P. 2d 681, which recites that a review court has the duty and power to determine the facts for itself. However, in this case, if the court will please note Headnote No. 2 and also page 682, Note No. 1 and 2, it states as follows:

> "In her appeal, the first contention of the defendant is that there is no evidence in the record upon which the court could find defendant guilty of mental cruelty. As this case is an equity case, this court has the duty and the power to determine the facts for itself. However, as was held in Doe v. Doe, 48 Utah 200, 158 P. 781, 786, and Schuster v. Schuster, 88 Utah 257, 53 P. 2d 428, we will not upset findings of the trial court on issues in which the testimony was in conflict, unless the record shows that such findings are clearly against the weight of the evidence. See also Stanley v.

> Stanley, 97 Utah 520, 94 P. 2d 465; *this because the trial court has a better opportunity to judge the credibility of the witnesses and the weight of their testimony. Especially is this true in cases involving quarrels between spouses.*"

The Court will readily see from what is quoted in this case and as set out hereinabove that the trial judge is always the one who has the opportunity to note the demeanor of the witnesses before him and note the manner in which they give their testimony and also to note the conflicts of the testimony and therefore is always in a better position to be a judge of the veracity of the witness or witnesses. And our Supreme Court has so held in many, many cases. Also, if the Court will take a moment in which to read the Findings of Fact that the Court signed, and we refer particularly to Paragraphs 8, 12, 13, and 14, of the Findings of the Court, it will there note that the Court evidently, because of the conflict in the testimony, believed the plaintiff as against the defendant and as a result thereof placed more weight on the testimony of the plaintiff than that of the defendant and thereafter, as a matter of course, granted a divorce to the plaintiff herein on the grounds of cruelty.

The defendant also cites the case of *Cordner v. Cordner*, Utah, 61 P. 2d 601, wherein he states that a trial court's finding will be upset where the record shows such findings are clearly against the weight of the evidence and, of course, we agree with that statement of the law. However, in the instant case, the evidence was so vastly

different and so much stronger and carried so much more weight than it did in the Cordner case that there is no comparison. Also the Cordner case was not particularly decided on the evidence and testimony but on the pleadings of the Complaint, whether or not it stated a cause of action as against a general demurrer, and the Supreme Court ruled that the Complaint did not state a cause of action. Just by way of passing and quoting from page 603 of the Cordner case, we find as follows: "There is no allegation of constant nagging, harassing, or annoying conduct, no rebuking of plaintiff publicly or privately with intent to humiliate plaintiff or to injure his character or reputation." (indicating such allegations would state a cause of action.) The language of the Supreme Court indicates that a contrary decision would have been reached if these allegations had been pleaded. The instant case not only has practically all these allegations, but there is ample evidence in the record to support them. Also again, we must ask the Court to keep in mind Findings No.'s 8, 12, 13, and 14, which are Findings made by the trial court which support the quoted statement hereinabove made by the Supreme Court.

In *Pinion v. Pinion,* Utah, 67 P. 2d 267, we wish to call the Court's attention to what is stated in this case at Page 268, which is as follows:

> "Even in an equity case, we do not overturn the judgment unless it is fairly against the preponderance of the evidence. The writer believes that every intendment should be in favor of the

trial court, for not only does he in a divorce case have the parties before him, enabling him to test credibility by demeanor, but the conduct and manner of the parties in the court room sometimes gives much aid in solving who really is at fault. Moreover, a trial judge may 'live with' a divorce proceeding in its preliminary stages and know it from angles which the record does not disclose."

Now, we turn to the case of *Anderson v. Anderson,* Utah 138 P. 2d 254, quoted by the appellant in her brief, and we refer the Court particularly to Page 254, wherein our Supreme Court says as follows:

"At the outset, it must be conceded that if the matters alleged in the complaint actually took place, it would be sufficient grounds of cruelty to warrant granting a divorce to plaintiff. While the evidence is conflicting, the court found the allegations to be true. There is sufficient evidence to support such findings of the trial court. *It must be remembered that the lower court saw the witnesses, and in a case of this kind much could be determined from their demeanor and the way in which they answered the questions put to them in court. There were certain inconsistencies in the testimony of defendant. From this and from the trial court's observation of witnesses' demeanor the trial court determined that her testimony was not entitled to the same credibility as plaintiff's.*

"As we have only the cold record before us, we cannot say that the lower court was in error in this conclusion. We affirm the findings of the

lower court on issues presented by plaintiff's Complaint."

CONCLUSION

In conclusion, we would like to state to the Court our position based and keeping in mind the overall picture drawn from all of the evidence introduced in this case. We think that it simmered down to merely this: Two people who have been married in name only for approximately ten years and have lived together not more than six months during this whole ten year period. At intervals when they have gotten together, they have quarreled, disagreed, fought, and nagged continuously, and incessantly and enjoyed nothing in common, and we see no reason or logic why two people should be forced to live together under these uncongenial, emotionally upsetting circumstances. What could be more shocking than to have people such as these living among society and constantly arguing, nagging, and harassing each other in public, among their friends, and in their home and otherwise. We further think that the Findings made by the trial court in this case were of a very substantial nature by virtue of the evidence introduced in this record and one will note by reading particularly the Findings of Fact, No.'s 8, 12, 13, and 14 that the court believed those Findings of Fact to be true as against all the evidence that might have been and was introduced, whether pleaded or not, by the defendant in this case. We want to further state that we think legally and logically that the trial court finding the issues in favor of the plaintiff for a

divorce on grounds of cruelty in this action was unquestionably proper and within its province, and we are confident that this Court in reviewing the Findings made by the trial court should have no hesitancy in affirming the trial court's decision under the overwhelming factual circumstances adduced by plaintiff.

In closing, we cite Finding No. 14, which reiterates the very language and reasoning under which the Hendricks divorce was granted by ruling of this Court: "The legitimate ends of matrimony in this case appear definitely to have been lost and destroyed beyond hope of redemption. . . . It appears that no good purpose, either social, moral, ethical or legal, will be served by requiring these parties to continue a relationship that is a mockery of the true concept of matrimony, the parties being clearly ill suited and maladjusted toward each other and having no interests in common to continue the legal relationship of husband and wife."

Respectfully submitted this 26th day of July, 1954.

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